IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 9497 of 2003

Between:

Gulf Oil Corporation Limited (Formerly IDL Industries Limited) rep.by its Managing Director of Sri S.Pramanik, Post Box No. 1, Sanath Nagar, (I.E) P.O Kukatpally, Ranga Reddy District.

..... PETITIONER

AND

1 The Revenue Divisional Officer
Chevella Divsion, Ranga Reddy District
2 Mahant Baba Sagardasji Udaseen, Rep.by its General Power of Attorney Sri Kalyani Narsing Rao son of Late Ramaiah
7-1-29/B/6, Begumpet, Lelanagar, Hyderabad-16

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of MANDAMUS, declaring the the 1st Respondent has no power or authority or jurisdiction to deal with the petition pending before him vide proceedings in L.R.No. L/76/2000 till the suit O.S.No. 142 of 2002 on the file of the 1st Additiional District Judge, Ranga Reddy District finally decided and consequently declare the action of the 1st Respondent in proceeding further with the petition pending before the him under Inams Abolition Act in L.R.No. L/76/2000 as illegal, arbitrary, unconstitutional and without any power or authority or Jurisdiction.

Counsel for the Petitioner: MR.T.RAJENDRA PRASAD

Counsel for the Respondent No.1: GP FOR REVENUE

Counsel for the Respondent No.2: Y.Srinivasa Murthy

The Court made the following :

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.9497 OF 2003

ORDER:

M/s.Gulf Oil Corporation Limited (formerly IDL Industries Limited), a Company registered under the Companies Act, 1956, filed the present writ petition seeking the following relief:

… Honourable Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of MANDAMUS, declaring that the 1st respondent has no power or authority or jurisdiction to deal with the petition pending before him vide proceedings in L.r.No.L/76/2000 till the suit O.S.No.142 of 2002 on the file of the 1st Additional District Judge, Ranga Reddy District finally decided and **consequently declare the action of the 1st respondent in proceeding further with the petition pending before him under Inams Abolition Act** in L.R.No.L/76/2000 as illegal, arbitrary, unconstitutional and without any power or authority or jurisdiction, and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

(Emphasis supplied)

The fact of the matter is not in dispute. The land admeasuring about Acs.640-00 in various survey numbers of Kukutpally village belongs to Mahant Sevadasji Udaseen Mutt represented by its Mahant. In 1964 and 1966, the petitioner claims to have obtained lease of the lands from the then head of the Mutt namely Mahant Baba Seva Das. The petitioner is engaged in manufacturing and marketing of explosives. It uses the land as safety zone and for the purpose of testing. After the death of Mahant Seva Dasji, Mahant Baba Sagar Dasji became Mahant. He submitted an application in Form I under Rule 5 (2) of A.P. (Telangana Area) Abolition of Inams Rules, 1955 (for brevity, the Rules) for making necessary changes and for obtaining Occupancy Rights Certificate (ORC). The petitioner herein, who has been allegedly in possession of large extent of land, is also party to the proceedings and notice was accordingly issued to the petitioner.

When the matter was pending before the first respondent (Inams Tribunal), one Sri Kalyani Narasinga Rao claiming to be sale agreement holder, filed a suit

being O.S.No.202 of 2000 on the file of the court of the II Additional Judge, Ranga Reddy for specific performance of the alleged agreements of sale dated 27-08-1981 and 15-06-2000. The said Court, by a judgment dated 14-03-2001, decreed the suit directing Mahant Baba Sagar Dasji to execute the sale deed after receiving balance of sale consideration. The Court also ordered symbolic possession to be delivered to Kalyani Narasinga Rao. Be that as it is, while the proceedings before the first respondent reached an advanced culminating stage (the petitioner also filed written submissions, additional written submissions and the matter was re-opened once), the petitioner filed a suit being O.S.No.142 of 2002 on the file of the Court of the I Additional District Judge, Ranga Reddy for cancellation of decree dated 14.03.2001 and for a declaration that the decree in O.S.No.202 of 2000 as null and void and not binding on the petitioner. It is not known whether the three defendants therein, namely, Mahant Baba Sagar Das Udasin Mutt, Baba Sagar Dasji and Kalyani Narasinga Rao are duly served or not and whether they have filed a written statements therein. Having filed the suit, the petitioner Company also filed the present writ petition on 12-05-2003 praying the relief noted at the outset.

This Court ordered Rule Nisi on 13-05-2003. By reason of the orders passed in W.P.M.P. No.12103 of 2003 on the same day, all the proceedings before the first respondent were stayed pending further orders or pending disposal of the suit, which ever is earlier. The second respondent represented by General Power of Attorney holder, while filing counter affidavit, has moved an application for vacating the interim order being W.V.M.P.No.3207 of 2003.

In the counter affidavit, the history of the Mutt has been traced. It is stated that an extent of Acs.640-00 was granted by the then Nizam of Hyderabad to meet the expenses of pooja and dhuni and for fulfilling the objectives of the Mutt started by Baba Sajjan Shah Kamalapathi Saheb, a hermit. It is also stated that whenever there is a change of Mahant, the Government of the day issued a Muntakhab (Letter of authority appointing Mahant or Trustee) in the name of successor Mahant. It is also alleged that Mahant Baba Sagar Dasji has been acknowledged as a successor of Late Mahant Baba Seva Dasji. The lease executed in 1964 and 1966 is admitted but the allegation that the petitioner herein expressed desire to purchase the property is denied. The second respondent also expressed his desire to take back a portion of the land and to offer a portion to them for purchase. But the petitioner never expressed his intention to purchase the same. The G.P.A. holder, who filed the affidavit on behalf of the second respondent, also admits about filing of the suit being O.S.No.202 of 2000 for specific performance of agreements of sale and the result thereof. It is alleged that the petitioner has filed the writ petition with a *mala fide* intention of procrastinating the litigation and deprive the second respondent to achieve its desire to spread the objectives of the Mutt and Hindu Dharma.

Though the interlocutory matters are listed before this Court, with the consent of the learned counsel for the petitioner and the learned counsel for the respondents, the matters were heard finally on 20-07-2004, 23-07-2004 and 26-07-2004 and hence the writ petition is being disposed of.

The learned counsel for the petitioner Sri T.Rajendra Prasad vehemently contends that the writ petition is not one for writ of Prohibition. As Sri Kalyani Narasinga Rao has been claiming the absolute ownership of the land by virtue of decree passed in O.S.No.202 of 2000, the petitioner was constrained to file a suit being O.S.No.142 of 2002 for cancellation of the said decree, that all questions regarding controversy or issues in the suit and therefore till the matter is pending before the Civil Court in O.S.No.142 of 2002, the first respondent cannot be permitted to proceed with the enquiry. **Per Contra**, the learned counsel for the second respondent Sri Y.Srinivasa Murthy contends that the writ petition is filed seeking an order restraining the first respondent from proceeding with the enquiry initiated at the instance of the second respondent and therefore virtually the petitioner is seeking a writ of Prohibition. He contends that unless the petitioner is able to show inherent lack of jurisdiction in exercise of powers under Article 226 of the Constitution of India, this Court should not restrain the first respondent from proceeding with the enquiry under Section 10 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 (for brevity, the Act), which is at advanced stage and when matters are reserved for orders. He also submits that Civil Court has no jurisdiction to deal with inam lands or estate lands. The learned counsel also placed reliance on the judgment of the Supreme Court in **Pushpagiri Math v Kopparaju Veerabhadra Rao** and **Thirumala Tirupati Devasthanams v Thallappaka Anantha Charyulu**. The learned counsel also placed reliance on the judgment of this Court in **Prudential Capital Markets Ltd, Calcutta v State of A.P.**

The only question that arises for consideration is whether a writ petition would be maintainable in the facts and circumstances about which there is no much dispute?

A reading of the prayer would show that though a writ of Prohibition is not specifically sought, the petitioner indeed seeks a direction to the first respondent not to proceed further with the petition pending before him under the Act. In the absence of any specific pleading that the first respondent lacks jurisdiction inherently, such writ petition would not be maintainable especially when the matter is at advanced stage. In **Prudential Capital Markets case (Supra)**, this Court considered the distinction between a Writ of Certiorari and a Writ of Prohibition. The relevant passage reads as under:

In view of the various precedents and the comments of textbook writers, it may be taken as well-settled that a Writ of Certiorari and a Writ of Prohibition have many characteristics in common. A Writ of Prohibition is issued at the earliest stage to prevent a lower Court/Tribunal from usurping the jurisdiction, which does not vest in it and where the lower Court/Tribunal inherently and apparently lacks jurisdiction. If a decision is already given by the inferior Court/Tribunal a Writ of Prohibition is not proper remedy and such decision without jurisdiction can only be quashed by a Writ of Certiorari. The execution or implementation of a decision by an inferior Court cannot ordinarily be aborted by a Writ of Prohibition. It is also well settled that issuance of a Writ of Prohibition, like other extraordinary remedies, is also subject to doctrine of alternative remedy, delay and laches and other rules of prudence governing issue of prerogative writs.

The principles were further summarised as under:

i. A writ of prohibition cannot be granted unless want of jurisdiction is apparent and if want of jurisdiction is not apparent, the applicant must wait until the decision making body passes orders and seek a writ of certiorari.

ii. A writ of prohibition ordinarily cannot be granted to stop execution of implementation or the decision.

iii. The grant of writ of prohibition is also governed by other principles, which ordinarily govern the grant of extraordinary writs like delay and laches, availability of alternative remedy etc.

The second respondent filed an application before the first respondent way back on 18.11.1999. The petitioner received notice from the first respondent and participated enquiry. The petitioner filed written submissions and additional written submissions long ago. It is brought to my notice by the learned counsel for the second respondent that after completing enquiry, the first respondent reserved the matter for orders and at the instance of the petitioner, it is re-opened. It is not denied. Not only the delay and laches, but also the fact that the petitioner actively participated in the enquiry would disentitle the petitioner to invoke the jurisdiction under Article 226 of the Constitution of India.

I have perused the additional written submissions annexed to the writ petition filed by the petitioner. The petitioner has taken all possible objections and this Court has no reason to assume that these objections would not be considered by the first respondent in proper perspective having regard to the provisions of the Act and the Rules. Indeed in a matter like this, the Revenue Divisional Officer shall have to consider all the objections raised by the petitioner, who is lessee of the land though it may not be entitled for any ORC under the provisions of the Act and the Rules.

A copy of the plaint in O.S.No.142 of 2002 is also annexed to the writ petition. A reading of the same would show that the petitioner has almost raised the same ground as raised before the first respondent. In relation to inam land, the basic issue is always whether the Civil Court's jurisdiction is ousted, having regard to the provisions of the Act and the Rules. It is now well settled that unless and until fraud and misrepresentation are alleged, a suit in relation to inam land ordinarily would not lie. Therefore, the mere fact that a suit being O.S.No.142 of 2002 filed on the file of the Court of the I Additional District Judge, Ranga Reddy does not strengthen the case of the petitioner. In the opinion of this Court has no prima facie case at all in these proceedings.

It is always open to the petitioner to raise all the grounds before the first respondent, if necessary by filing yet another set of additional written submissions.

This writ petition is not *bona fide*. In the result, the writ petition is disposed of with the observations as above and the first respondent is directed to complete the enquiry and pass appropriate orders in Proceedings L.R.No.L/76/2000 within a period of eight weeks from the date of receipt of a copy of this order.

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(V.V.S.RAO,J)

.07.2004.

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Revenue Divisional Officer, Chevella Division, Ranga Reddy District.

2. 2CCs to G.P.for Revenue, High Court of A.P., Hyderabad.

3. 2CD copies

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